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April 24, 2001

Special Committee on the Election Act

Final Report

Madam Speaker
and
Members of the
Legislative Assembly,

The Special Committee on the Election Act was established by resolution of the Legislative Assembly on 9 June, 2000 during the 1st Session of the 61st General Assembly as follows:

WHEREAS the Election Act was last amended in 1996;

AND WHEREAS following the recent general election Islanders expressed concerns with various provisions of the Act;

AND WHEREAS this government is committed to being open and accountable to the people of Prince Edward Island;

THEREFORE BE IT RESOLVED that a Special Committee of this House be established to be called the Special Committee on the Election Act;

BE IT FURTHER RESOLVED that this committee be comprised of five Members, one to be named by the Leader of the Opposition, four to be named by the Premier;

AND BE IT FURTHER RESOLVED that this Assembly request the Special Committee on the Election Act meet to receive public opinion and report back to this House with recommendations;

AND BE IT FURTHER RESOLVED that the Special Committee be authorized to meet intersessionally between the First and Second Sessions of this General Assembly.

Moved by Honourable Patrick G. Binns, Premier, seconded by Elmer MacFadyen, Government House Leader

Permanent Members of your Committee are as follows;

Mr. Jim Bagnall, MLA, Chair
Hon. Ron MacKinley, MLA
Mr. Cletus Dunn, MLA
Ms. Helen MacDonald, MLA
Mr. Elmer MacFadyen, MLA

Your Committee made interim report in December, 2000 and now submits the final report for the consideration of Members of the Legislative Assembly.

Background

As previously reported, the Committee advertised for, and received public opinion on the Election Act. Since that time The Committee has met nine times, including the three public hearings and has been assisted in its work by Mr. Merrill Wigginton, Chief Electoral Officer and Mr. Lowell Croken, Deputy Chief Electoral Officer. Your Committee sincerely thanks Mr. Wigginton and Mr. Croken for the professional and comprehensive assistance provided to it.

Thirteen presentations were received at public hearings from the following individuals and organizations;

1. Andrew Clarey:
2. District 7 Progressive Conservative Association
3. Dr. Leon Loucks
4 Island New Democrats
5. Institute of Island Studies
6. Leo Broderick:
7. PEI Alternative Budget Coalition
8. Canadian Union of Public Employees
9. Federation of Labour
10. Edith Perry
11. Lesley Sprague
12. District 18 Progressive Conservative Association
13. Progressive Conservative Association of PEI

In addition, the following submitted views to the Committee in writing

14. District 15 PC Association
15. Joan M. Bartlett

Public Hearings

While the public hearing process produced a considerable divergence of opinion on the topic of the Election Act, several recurring themes emerged. These themes include the following:

1) Election Act should be amended to facilitate voting in hospitals to ensure that those admitted to an Island hospital have an opportunity to vote on election day if one of the other voting alternatives are not available to the patient.

2) Mail in balloting procedures as presented in the Election Act are cumbersome and potentially costly to the elector. In addition, the time frame envisaged in the Act to turn around applications is not adequate.

3) Enumeration period as envisaged in the Act is too short. In addition, some of the administrative provisions surrounding the conduct of enumerations should be changed to facilitate the production of a more accurate list.

4) Eligible electors not on the voters list should be able to swear the oath of an elector at the advance poll and vote and the swearing of an affidavit indicating that the elector will be absent on election day should be eliminated.

5) Poll sizes should be regularly monitored and large polls split well in advance of elections.

6) Returning Officers, Election Clerks, Deputy Returning Officers, Poll Clerks and Poll constables should be regarded as employees of Elections PEI and be properly trained and knowledgeable of the electoral process, district and polling divisions, the poll in which they work and of the polling station itself.

7) Provision should be made so that as few people as possible greet electors at polls before they vote and politically partisan activity and presence at polling stations must be kept to a minimum.

8) The moving of poll stations after enumeration should be avoided. If absolutely necessary, every effort must be made prior to polling day to communicate the change to affected electors.

9) Support was expressed for the establishment of a system of proportional representation through use of mixed member PR (combination of constituency elected Members and list MLAs) or some other system to more closely reflect the percentage of popular vote with the percentage of seats in the Legislative Assembly.

10) Elections PEI should embark on a public awareness exercise to inform the public of

protections in place to ensure the secrecy of the ballot.

11) Election financing should be closely monitored and caps should be placed on individual donations. Corporate and union donations should be disallowed and/or closely monitored.

12) The effects of the release of polls during election campaigns were discussed and the effects of third party advertising.

While the above does not represent an exhaustive listing of all concerns raised by intervenors before the Committee, it is representative of the most commonly recurring matters brought to our attention. As stated in our interim report to the House, your Committee wishes to sincerely thank all presenters who made their views known. We recognize that a considerable amount of time and effort goes into the preparation of submissions to Committees such as this. Without the benefit of these interventions, the Committees task of identifying problem areas within the legislation becomes much more difficult indeed. Your Committee encourages those that are interested in any of the individual presentations received to contact the Committee.

Recommendations on the Election Act (R.S.P.E.I. 1988, Cap E-8)

Having carefully considered presentations received, your Committee makes the following recommendations with respect to the **Election Act (R.S.P.E.I. 1988, Cap E-8)**.

1. **Hospital Voting:**

   As noted above, many intervenors before your Committee recommended that a system be established whereby electors admitted to hospital and who have not voted at an advance poll and are unable to vote at a regular poll be afforded an opportunity to vote through the implementation of a mobile poll in Island hospitals.

   There are presently seven hospitals on Prince Edward Island to which this situation would apply and, in an effort to ensure that all Islanders have an opportunity to exercise their right to vote, **your Committee recommends that Elections P.E.I. ensure the establishment of mobile polls for all Island hospitals in time for the next General Election.**

2. **Mail in Balloting:**

   Many intervenors expressed the opinion that the mail in balloting procedure envisaged in the Election Act is cumbersome, time consuming and restrictive.

Your Committee specifically therefore **recommends that amendments be made to allow for voting in the office of the District Returning Officer immediately after the close of nominations and after the printing of ballots. Further, the mail in balloting procedure could be enhanced by the extension of the deadline for the return of mail in ballots from 6:00 pm on the Friday prior to an Election to 12:00 noon on Election Day.** Your Committee is of the opinion that many of the difficulties associated with the use of the mail in balloting procedure will be alleviated by the implementation of these two recommendations.

In addition, your Committee recommends that Elections P.E.I. examine alternate means of voting to complement mail in balloting, including, but not limited to, electronic voting and video conferencing.

3. **Enumeration Process:**

Your Committee agrees that it is imperative that lists of electors as produced by Elections P.E.I. must be as up to date and accurate as possible. Further, your Committee accepts that in order to achieve the foregoing, an enumeration or similar process must be conducted during the writ period to enhance accuracy.

Election periods on Prince Edward Island are reasonably short (minimum 26 days - maximum of 32 days); however, your Committee feels that this is an ample amount of time for the conduct of an election. The question then becomes how to enhance the results of an enumeration which must be conducted within this comparatively short time frame?

Your Committee recommends that the best way to achieve the desired objective of enhancing the accuracy of lists of electors within a short time frame is to invoke a system of "confirmation" rather than enumeration. This system is in use in Alberta and provides a system whereby the previous lists of electors are utilized and a confirming of electors is conducted during the writ period. A confirmation officer (rather than an enumeration officer) would be required to go door to door in a constituency to confirm the accuracy of the list information and to leave with the electors a confirmation form which would contain polling locations, dates and times. This process will enhance the accuracy and time involved in the production of the list by eliminating the need to re-enter already accurate information (which is estimated to be as high as 75%). A permanent 1-800 "confirmation" line could also be established and advertised periodically so that changes to the electoral lists could be made between elections.

In addition, your **Committee recommends that Elections P.E.I. utilize 911 Civic Addressing to further enhance the accuracy of the list and to eliminate the need to enter an electors occupation as further confirmation of identity.**

4. **Advance Poll Voting:**

Your Committee recommends that the **Election Act be amended to enable any eligible elector to vote at the advance poll (even if their name is not on the list of electors) by swearing an oath that they are an eligible elector (same as in a regular poll).**

In addition, **your Committee recommends that the requirement to swear an oath that you will be absent from the polling division on ordinary polling day be eliminated and replaced with a simple signature in the poll book.**

Implementation of this recommendation will result in a situation whereby any eligible elector, whether or not they are on the list or are to be absent from the polling division, will be able to vote at an advance poll.

5. **Your Committee recommends that Section 58 of the Election Act be amended (if necessary) to ensure that all polling stations are wheelchair accessible.**

Further, your Committee recommends that Elections P.E.I. begin immediately to identify polling stations for each polling division that are wheelchair accessible. Where no wheelchair accessible facility exists within a division, assistance should be provided through Elections P.E.I. to construct wheelchair access to an existing facility with the polling division.

6. Your Committee is concerned with some expression of intimidation and politically partisan activity within polling stations. **We therefore recommend that Elections P.E.I. endeavour to establish rules for polling stations (and immediate area) whereby politically partisan activity is kept to minimum**. Only one agent for any registered political party should be present at any one time in the polling station (with identification supplied by the DRO). **Further, Elections P.E.I. should prepare for use at all polling stations a set up design plan so that all stations will be configured in basically the same fashion.** The Deputy Returning Officer and Poll Clerk should be the first and only persons authorized to receive electors at the polling station, unless a poll constable is engaged by Elections P.E.I. in which case the constable would provide assistance to electors.

7. **Your Committee recommends that more comprehensive training be provided to officers in the employ of Elections P.E.I. to ensure that all who are acting under the authority of Elections P.E.I. are knowledgeable of the legislation and the electoral process.** Specifically, your Committee recommends that the following Election Officials be trained (in advance when possible) by Elections P.E.I.:

- Returning Officers

- Deputy Returning Officers
- Poll Clerks
- Poll Constables
- Enumeration or Confirmation Officers

Further, your Committee recommends that very clear instructions be given to Returning Officers and Deputy Returning Officers respecting:

- The striking of names from the elector list after an elector has voted.
- The inspection of poll books
- Responsibility for the general conduct of persons within, or near, a polling station.

8. Some intervenors suggested that electors question the secrecy of the ballot. Your Committee is comfortable that the ballot is indeed secret and that there is no question that the confidentiality of the ballot is ensured. Having stated this, your Committee is of the opinion that some public education may be required through Elections P.E.I. with respect to the process involved in voting to ensure that Islanders are made aware of this fact.

9. In an effort to provide greater clarity with respect to ordinary residency, your Committee **recommends that Section 22 of the Act be amended by deleting the words "a married person" in subsection 22(a) and by deleting subsection 22(b).**

10. Several intervenors raised the question of political party financing. Your Committee recognizes that this matter may be of concern to some intervenors; however, we respectfully submit that such matters are not encompassed by the Election Act but rather by the Election Expenses Act and are therefore not within the mandate of this Committee.

11. Your Committee recommends that the Federal Government give consideration to amending the Canada Elections Act to enable Members of the Provincial Assemblies to seek election to the House of Commons by taking an unpaid leave of absence rather than being forced to resign their seat.

    Implementation of this recommendation has the potential to save taxpayers of Prince Edward Island the cost of a by election (estimated to be approximately $40,000).

12. Your Committee recommends that the above recommendations be implemented within 18 to 24 months.

Proportional Representation:

As stated earlier, your Committee received 15 presentations in total. Seven of these

presentations promoted the establishment and/or further examination of the implementation of a system of proportional representation for Prince Edward Island. Your Committee had the benefit of receiving from the Institute of Island Studies a well researched and well presented paper on this topic entitled "***Electoral Reform for Prince Edward Island***". The paper was commissioned by IIS and authored by ***J. Andrew Cousins of Bloomfield, P.E.I.*** Your Committee sincerely thanks all intervenors who made their views known on this issue. In particular, your Committee wishes to thank the Institute of Island Studies for efforts in facilitating and encouraging public dialogue in this regard. Intervenors advocating for a system of proportional representation before the Committee presented compelling and stimulating arguments for the establishment of an alternate system of returning Members to the Legislative Assembly, one which would more closely equate the percentage of popular vote to the percentage of seats in the Legislative Assembly.

Often cited as a working example of proportional representation for Prince Edward Island was a 30 seat Legislative Assembly. The example envisaged a system of returning Members through the establishment of twenty constituencies across Prince Edward Island comprised of approximately the same number of electors. In this example, and using Year 2000 Elections P.E.I. data, the average constituency size would be **4,704** electors (94,087 electors / 20 = 4,704). The representatives for these 20 constituencies would be determined by the traditional "first past the post" or plurality electoral system. That is, the candidate in the constituency receiving the greatest number of votes would be declared the winner. The remaining 10 seats would be filled from lists submitted by registered political parties to the Chief Electoral Officer. A minimum percentage threshold would be established (possibly 8%) and the seats would then be distributed according to popular vote. For example, if three registered political parties contested an election, they would submit their list of ten to the Chief Electoral Officer. The party lists would be numbered one through ten with number one receiving the first seat allotted to that party pursuant to popular vote, number two the second seat and so on. Using percentages from the Year 2000 General Election, the Progressive Conservative Party received 57.87% of the popular vote, the Liberal Party 33.73% and the Island New Democrats 8.39%. The resulting apportionment of list seats would then be as follows;

Progressive Conservative Party	-	57.87% (6 seats)
Liberal Party	-	33.73% (3 seats)
Island New Democrats	-	8.39% (1 seat)

The government would then be formed by the political party winning the greatest cumulative number of constituency seats and list seats in the Legislative Assembly.

Proponents of this system argue that the first past the post system produces one sided electoral results, such as that experienced on Prince Edward Island in three of the last four General Elections (1989, 1993 and 2000). Advocates of PR argue that these one sided results as produced by our current system;

1) does not adequately transfer popular vote to seats and therefore a significant number of voters do not realize representation on the floor of the House that they voted for. For example: in the 2000 General Election, 42.1% of the popular vote cast was for either the Liberal Party or the Island New Democrats yet this popular support translated into only one seat on the floor of the House, and,

2) does not serve to promote stability in government in that strong and viable Official Oppositions are not being elected and therefore the training and experience gained by serving in Opposition, in preparation to possibly govern, is not being achieved.

The last four General Elections have produced the following electoral results with our existing first past the post system;

1989 General Election		
Political Party	Popular Vote	Number of Seats (32 seat House)
Liberal Party	61%	30 seats (93.75% of seats)
PC Party	36%	2 seats (6.25% of seats)
New Democratic Party	3%	0 seats (0% of seats)

1993 General Election		
Political Party	Popular Vote	Number of Seats (32 seat House)
Liberal Party	55%	31 seats (96.88% of seats)
PC Party	40%	1 seat (3.12% of seats)
New Democratic Party	8.4%	0 seats (0% of seats)

1996 General Election		
Political Party	Popular Vote	Number of Seats (27 seat House)
Liberal Party	44.7%	8 seats (29.63% of seats)
PC Party	47.7%	18 seats (66.67% of seats)
New Democratic Party	7.9%	1 seat (3.7% of seats)

2000 General Election		
Political Party	Popular Vote	Number of Seats (27 seat House)
Liberal Party	33.7%	1 seat (3.7% of seats)
PC Party	57.9%	26 seats (96.3% of seats)
New Democratic Party	8.4%	0 seats (0% of seats)

The Cousin discussion paper, as commissioned by the Institute of Island Studies, concludes as follows;

1) Most democracies in the world, including those in Europe, Australia and New Zealand, use some form of proportional representation.

2) There is a trend toward "blended systems", including a portion of seats decided on the basis of single-member constituencies (such as we have on P.E.I.) and a portion by PR. Such a system has been recently introduced into New Zealand and was used in the election of the new Scottish Parliament.

3) The Cousin discussion paper also concludes that a "blended" system would seem to be most appropriate for Prince Edward Island and suggests a 30 seat Legislative Assembly, with 2/3rd of the seats assigned to 20 single member constituencies and 10 to be decided by PR. With such a system, the last provincial General Election would have resulted in 25 PC Party Members, 4 Liberal Party Members and 1 Island New Democrat.

Recommendation

Your Committee has considered the matter of proportional representation for Prince Edward Island closely and carefully. In so doing, we have considered the limited Canadian experience. We have also reviewed the report and recommendations of the ***Election Act and Electoral Boundaries Commission*** (May 1994) entitled "Changing the Political Landscape".. In that Report, the Commission recommends as follows;

"The adoption of mixed member proportional representation (MMPR) in this Province would represent a major departure from traditional British and Canadian electoral approaches. While there are some features of MMPR that may be commendable, its implementation in this jurisdiction would not be appropriate at this time. First, there has been little experience with MMPR within Canada. Second, there has been limited discussion among political parties and the populace about the merits of such an approach. Lastly, there are a number of important issues related to PR which would require much debate. These issues include the role of political parties in selecting list candidates, the accountability of list candidates to the public and the method of apportioning seats to political parties following each election. Based on

the above, the Commission concluded that MMPR would not be pursued at this time."

Your Committee finds itself in agreement with the position as articulated by the Commission in 1994. Having stated this, we would be remiss if we did not recognize that there have been significant changes worldwide since 1994 that must be contemplated. The traditional British electoral approach (first past the post or plurality) of returning members to parliament has been reviewed and revised in many jurisdictions including New Zealand, Scotland and Australia. One could hardly argue favourably that PR electoral reforms in those jurisdictions has resulted in instability in government!

Your Committee agrees with many intervenors in that an alternate system of returning members should be fully explored, and Islanders broadly consulted, before any serious consideration may be given to the issue of fundamental electoral change with respect to the returning of the Members of the Legislative Assembly of Prince Edward Island. Our geographic size and relatively stable population base have all helped us to determine what has been historically deemed to be an effective and appropriate electoral system for Prince Edward Island. To recommend a significant departure from our traditional electoral system based on this set of hearings, which largely focused on the detail of the Election Act itself, would not be responsible. Regardless, there is no question, the matter of proportional representation is worthy of further examination. Islanders must be advised of what system or systems of PR are actually under consideration. As the Committee discovered, there exists many different systems of PR from the pure PR system such as that used in Israel where the entire country forms one constituency and voters vote for a party list of candidates. The number of legislative seats is directly related to the popular vote so that if a party receives 40% of the popular vote, that party would receive 40% of the seats in the House. Other systems include the single transferable vote system such as that used in Ireland and for Senate elections in Australia to Mixed Member Proportional Representation systems (vary in structure and utilize portions of both the plurality/constituency method of returning members and proportional representation) such as used in New Zealand and Germany for example.

In conclusion, what has been clearly demonstrated to your Committee during the course of this public hearing exercise (and through additional reading on other systems in existence) is that a comprehensive analysis of the application of PR on Prince Edward Island must be done before a reasoned determination may be made on a specific proposal. There exists too many unanswered questions at this point to recommend the implementation of a system of PR. For example;

1) Generally, is a system of proportional representation in the long term best interest of Prince Edward Island and its people given our historic stability, reasonable satisfaction with our current system, high political involvement/participation and extremely high voter turnout? Do one sided electoral results in three of the last four General Elections clearly demonstrate a problem of such magnitude that drastic electoral reform is required immediately? Islanders have been electing General Assemblies since 1773 by the traditional FPTP system and have not in any significant way been demanding electoral reform.

2) Very important detail surrounding the implementation of an acceptable system of PR or MMPR have not been adequately developed. For example, if Prince Edward Island were to agree to a system of PR in principle, what form should it take? If we adopt the 30 seat House with 20 constituency seats and 10 list seats, for example, how do Prince Edward Islanders;

a) select a system of proportional representation that affords electoral map flexibility to reflect our unique demographic, cultural and historical characteristics? For example, our electoral districts must be comprised of approximately the same number of electors in each district (presently the legislation allows for a +/- 25% variance from the mean). With a reduction to 20 constituency seats, does there exist sufficient flexibility to allow for the establishment of an electoral map that reflects a desirable rural/urban distribution of seats and adequate representation for each of P.E.I.s three counties?

b) how does PR work with a comparatively small population base and small single member constituencies? (a comprehensive review of other small countries/jurisdictions with PR will be beneficial)

c) how are party lists created and what is the role of political party organizations in the creation of these lists?

d) should there be a maximum number of terms a list member may sit in the House? If the Member wishes to continue to sit in the House after a serving two terms as a list MLA for example, should they be required to contest a constituency seat?

e) how accountable are list members to the electorate for their actions? Are list members more accountable to the party than to the electorate?

f) Would electors vote twice, once for the constituency representative of choice then again on a ballot to select their top ten list MLAs (preferential voting) or would Islanders vote once and the list MLAs simply determined solely on the strength of popular vote.

g) What effect would by-elections have on the distribution of list seats in the House? Would the change in popular vote resulting from a by-election result in a change in the distribution of list seats in the middle of a General Assembly and if so, would this create instability?

h) Would there be created within the House two separate "types" of MLAs such that one would have more or less authority/respect than the other? (List

MLAs vs. Constituency MLAs)

These are just a few of the questions that the Committee feels remain unanswered. Until a more comprehensive and inclusive review of the systems of PR that may work for P.E.I. are available, neither this Committee nor the Legislative Assembly will be in a position to make a reasoned decision on the appropriateness of an alternate system of returning Members to the Legislative Assembly of P.E.I.

Accordingly, your Committee recommends that Elections P.E.I. commence as soon as possible a review of the systems of proportional representation presently in existence in other jurisdictions. Particular attention should be paid to jurisdictions of reasonably comparable geographic size and population to Prince Edward Island. After the conduct of this review, Elections PEI would make report on its findings to the Speaker of the Legislative Assembly who would then table the report in the House for the consideration of all Members. In addition, and after the report has been received and Members have had an opportunity to examine same, Islanders should be broadly consulted on a specific system or systems. This approach will ensure that Islanders have ample opportunity for meaningful input into the way in which they return Members to the Legislative Assembly to represent their interests.

Respectfully submitted,

Jim Bagnall

Jim Bagnall, MLA, Chair,
Special Committee on the Election Act